Regulatory Burden Task Force

Report to the Ontario Securities Commission

December, 2003

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Introduction

Members of the Task Force

The members of the Regulatory Burden Task Force, established by the Ontario securities Commission (OSC) in October, 2001, are:

Morley P. Carscallen, F.C.A. – a former senior partner of Coopers & Lybrand (now PricewaterhouseCoopers) and former Vice-Chair of the OSC;

W. Keith Gray – a retired Chair and CEO of TD Waterhouse and TD Evergreen, retired Vice Chair of TD Securities Inc., and a former Director of the Montreal Stock Exchange and the Canadian Depositary for Securities;

J. Garnet (Gar) Pink, Q.C. – a corporate consultant and a former senior partner of Tory Tory DesLauriers & Binnington (now Torys), where he practised corporation and securities law.

Mandate of the Task Force

The mandate of the Task Force was:

1. to canvass market partici ants with a view to identifying instances where the regulatory activities of the OSC create efficiency impediments and associated cost impacts for market participants that are not justified by the public interest benefits derived from such activities; and

2. to recommend to the OSC measures which it should consider implementing to alleviate regulatory burdens upon market participants without impeding the ability of the OSC to fulfill its statutory responsibilities to investors and the capital markets.

The OSC's mandate is: (1) to provide protection to investors from unfair, improper or fraudulent practices; and (2) to foster fair and efficient capital markets and confidence in their integrity. Accordingly, we have considered investors to be the most important market participants in addition to members of the securities industry and issuers of securities. From the perspective of investors, the absence of desirable, effective regulatory actions that are necessary to protect them and foster confidence in the capital markets constitutes, in effect, an unnecessary regulatory burden upon them. This is particularly evident in the post Enron / WorldCom / Tyco era.

Consultation with Market Participants and OSC Staff

In order to address our responsibilities, we prepared an Action Plan pursuant to which we selected and consulted groups of market participants, including registrants, issuers, investors, self-regulatory organizations (SROs), industry associations, and / or advisors to such persons or organizations. In accordance with our mandate, we did not convene public meetings nor did we publish a general request for comments. We asked the market participants to provide us with their concerns, complaints, comments and suggestions relevant to our mandate. We have not identified the persons we consulted as we assured them that their comments and suggestions were not for attribution. Our consultations with market participants occurred between October, 2001 and September, 2002.

We also asked junior and senior OSC Staff members for their comments regarding complaints or expressions of concern they have received from market participants and what improvements and efficiencies they believe might be instituted.

Comments Received From Market Participants

Our report includes descriptions of comments, concerns and suggestions we received from market participants in the manner that they were articulated by such participants. Because our information gathering process was not intended to constitute a comprehensive survey of a multitude of market participants, the comments and expressions of concern we

received should not necessarily be considered to be representative of the views of a majority of market participants. However, we believe that the Commission should nevertheless investigate these concerns to determine their validity and whether or not they constitute systemic problems which should be addressed by the Commission.

We have considered all of the comments, concerns and suggestions that we received and have included in our report those issues which we believe the Commission should consider. Because different market participants raised similar concerns regarding various areas of the Commission's operations, our report contains a certain degree of overlap and repetition. We have attempted to include in the report specific examples of the concerns raised by market participants. If the Commission desires additional details in particular areas we would be pleased to provide them where possible.

Task Force Recommendations

In most cases, descriptions of the regulatory burdens raised by market participants are followed by our recommendations as to the measures that the OSC might consider implementing in order to alleviate the burdens perceived by market participants. We recognize that there may be practical difficulties in implementing some of our suggestions. However, such suggestions might nevertheless contain ideas or concepts that the Commission could develop into viable proposals to eliminate the regulatory burdens in question.

We understand that the Commission may have already addressed, or may be in the process of addressing, certain of the issues which market participants brought to our attention. However, we hope that our recommendations will be of some assistance in the Commission's continuing consideration of those matters.

Because our inquiries of market participants were directed to reducing costs and regulatory burdens, many of the comments we received were critical of the actions of the OSC generally or of its Staff. We also received a number of complimentary comments regarding the work of the OSC and its Staff, as well as objective and constructive

comments and suggestions from OSC Staff members. The fact that we have made specific recommendations for improvement in certain areas, based on the comments we received, should not be construed as a general criticism by the market participants we consulted, or by the Task Force, of the OSC or of the abilities or diligence of its Staff. In this regard, we note that the Commission has received overall positive ratings from its stakeholders according to extensive Stakeholder Satisfaction Studies conducted by Ipsos Reid in the Spring of 2000 and in November- December of 2001. Based on our Task Force experience, it is apparent to us that the Commission has made significant improvements in its operations since it became self funding and that it continues to strive for further improvement.

We recognize that some of the comments and recommendations are to some extent beyond the scope of our mandate. However, we have included them in our report because market participants vigorously expressed their belief that certain issues are of critical importance to them.

Ongoing Consideration of Regulatory Burdens

We were advised by market participants with whom we met that the Task Force provided them with a useful mechanism that enabled them to communicate their complaints, concerns and suggestions to the OSC on an anonymous basis. We believe that in order to continue to improve communications with market participants a working group with a mandate similar to that of the Task Force be established by the OSC on a periodic basis. Alternatively, an on-going facility designed to receive and deal with complaints and suggestions could be established.

Implementing Task Force Recommendations

We recommend that the Executive Director report at least monthly to the Executive Committee as to the manner in which concerns expressed by market participants, and the Task Force's recommendations, are being dealt with. The Executive Committee would then be in a position to

report to the Board of Directors periodically regarding its consideration and / or implementation of the suggestions contained in our report.

REGULATORY BURDENS AND TASK FORCE RECOMMENDATIONS

1. Overarching Regulatory Burden

1.1 Multiple Securities Regulators and Lack of Rule Harmonization

Comments Received From Market Participants:

The most significant problem raised by market participants is the requirement to deal with multiple regulators and multiple rules and regulations. A senior securities counsel stated that "All other problems pale in comparison to the lack of harmonization." Market participants are frustrated by the fact that they must comply with differing substantive requirements in many jurisdictions and that they are required to make identical filings with, and applications to, many regulators. These requirements cause significant transaction delays and impose onerous cost burdens upon the securities industry and issuers, which burdens are borne ultimately by investors.

Recommendation:

Ideally, a national securities regulator should be established. Achieving this goal would require the co-operation of thirteen legislative and regulatory authorities to reach compromises to eliminate the burden of multiple regulators, achieve rule harmonization and accommodate local interests and policy objectives. Australia, notwithstanding its differing regional interests, was able to create a national securities regulator because the regional authorities recognized that they were competing with the world while fighting among themselves. Although efforts to establish a national regulator in Canada should be pursued vigorously, success cannot be assured within any reasonable time frame, if at all. Consequently, the OSC, together with other securities commissions, the Canadian Securities Administrators (CSA) and the SRO's, should continue to focus on more readily achievable milestones. The Mutual Reliance Review System (MRRS) should be expanded to permit each provincial regulatory authority to treat compliance with another jurisdiction's rules as compliance with its rules. Legislative changes should be pursued

whereby securities regulators would be entitled to delegate their responsibilities in particular situations to another securities regulator. For example, matters involving oil and gas or mining and exploration could be delegated to the Alberta Securities Commission and the British Columbia Securities Commission, respectively, on the basis of their expertise in dealing with those industry sectors.

1.2 The Investment Dealers Association of Canada's (IDA) Conflict of Interest

Comments Received From Market Participants:

It was apparent from our discussions with representatives of retail investors and other market participants that many do not perceive the IDA to be responsive to retail investors. It is seen as a trade association catering more to the interests of its members than to the interests of investors. The belief was expressed that the IDA cannot be an effective SRO because it is, and is perceived to be, burdened by the conflict between its interest in benefiting its industry members and its duty to protect investors from the improper practices of those members. We were told by market participants that those who regulate the securities industry should be at arm's length from that industry. They indicated to us that securities activities carry just as much (if not more) risk of harm to the general public from unfair, improper or fraudulent practices as do banking activities, yet the banking industry has not been permitted to regulate itself.

We heard serious concerns that the OSC's oversight of the IDA's regulatory activities was not effective and that the SEC's oversight of SRO's was superior to that of the OSC. Sanctions imposed by the IDA on its members in connection with improper practices had often been seen to be too lenient and had sometimes been characterized as "slaps on the wrist".

Recommendation:

We recognize that there has been a marked improvement in the effectiveness of the IDA's regulatory activities, including the imposition of stiffer penalties. In addition, with regard to the OSC's oversight of the IDA's activities, the OSC made 49 improvement recommendations to the IDA of which 48 have been implemented. The IDA advised us that its internal procedures and governance mechanisms are sufficient to prevent the conflicts of interest, which it acknowledged are inherent in its dual role structure, from actually influencing its regulatory activities. However, in our view the problem is the investing public's perception of the IDA's conflict of interest. Perception in this case is reality and we do not believe that it is possible to change that negative perception solely through education of the investing public by the IDA regarding its internal operating procedures and structures even if they actually ensure that the IDA's regulatory activities are unbiased and independent of the interests of its members.

Consequently, we recommend removing from the IDA its trade association / lobby functions, leaving it with its regulatory responsibilities, and changing the membership of its Board of Directors to ensure that it is, and is perceived to be, independent of the securities industry. In this regard, we recommend that 50% of the members of the IDA's Board of Directors be independent of members of the IDA.

We also recommend that the IDA's other governance structures and procedures be altered where necessary to ensure, to the greatest extent possible, that its self- regulatory activities are, and are perceived to be, impartial and thus fair to investors. For example, the IDA's disciplinary hearings are now conducted by panels composed of three members. The Chair of each panel is a lawyer who is not associated with IDA members and the other two panel members are representatives of IDA members. Although the IDA advised us that they were not aware of any situation where the two IDA representatives had outvoted the Chair in a disciplinary decision, the perception remains that the two IDA representatives could determine or influence the outcome of hearings. We therefore recommend that each IDA disciplinary panel be composed of an independent lawyer as Chair, an independent IDA Director and a representative of an IDA member. The presence of the IDA member representative would ensure that the panel's adjudicative function would have the benefit of the industry expertise of that

representative. This panel structure would eliminate any appearances of impartiality in the decisions reached by the IDA disciplinary panels.

The OSC should also consider the desirability of a merger of the IDA, the MFDA and RS Inc. to establish a single SRO to regulate the operations and conduct of its registrant members and to administer and enforce marketplace trading rules. This structure would provide market participants with a "one - stop" national self regulatory organization which could result in administrative efficiencies and cost savings. Such a merged SRO would require recognition by all of the securities commissions. If the OSC were to consider the merger to be desirable, it could work with the CSA to implement the model contemporaneously across Canada.

1.3 Complexity of Regulatory Requirements

Comments Received From Market Participants:

We received an overwhelming number of complaints regarding the unnecessary complexity of securities regulation. Issuers and registrants have difficulty in understanding their obligations and often must resort to costly and time-consuming legal advice. Even experienced senior securities lawyers expressed concerns regarding the increasingly prescriptive nature of securities regulation. For example, we were advised that Rule 45-501 - Exempt Distributions and Multilateral Instrument 45-102 - Resale of Securities are extremely complicated and difficult to understand even for seasoned practitioners. OSC staff have received a myriad of inquiries as to the OSC's interpretation of those instruments.

Recommendation:

In the formulation of new regulations and the amendment of existing regulations, the Commission should attempt to achieve an appropriate balance between complicated,detailed prescriptive rules and principle-based proscriptive rules. Certain regulatory issues may be more amenable to a proscriptive approach and others may require the greater specificity afforded by prescriptive treatment. The OSC should review existing and proposed regulations to determine

whether they can be simplified, re-formulated on a more proscriptive basis or eliminated altogether.

Further, in order to assist market participants in dealing with existing regulatory complexity, the Commission should develop more plain language information booklets which explain certain rules. The availability of such booklets in paper form and on the OSC website could reduce the need for specialized legal advice and improve compliance with the rules. For example, the Contact Centre receives many queries regarding Rule 45-503 - Trades to Employees, Executives and Consultants, particularly with respect to stock option plans. An information booklet would be helpful to market participants in this area. Plain language information booklets would be more helpful to market participants than Companion Policies to Rules which often tend to be almost as complicated as the Rules themselves.

1.4 Multiple Financial Regulators

Comments Received From Market Participants:

The regulatory landscape is very complex with many regulators dealing with different financial activities. Investor representatives informed the Task Force that it is very difficult and confusing for most individual investors to know where to turn for assistance when they experience problems in connection with their investment activities. It was suggested that there should be a single, readily accessible, point of contact where investors can be directed to the appropriate authority and also receive an explanation of the process to follow in order to have their problem addressed. In Ontario, the OSC's Inquiries Unit & Contact Centre is an excellent working model. However, it is not national in scope and it deals only with securities- related matters.

Recommendation:

Subsequent to our receipt of this complaint by investor representatives, the establishment of the Centre for the Financial Services OmbudsNetwork (CFSO), an industry-based consumer assistance service, was announced. The CFSO is one component of the recently created Financial Services OmbudsNetwork (FSO). The FSO also includes: (1) the Ombudsman for

Banking Services and Investments (OBSI); (2) individual financial service providers and their company-level consumer complaints management activities; and (3) industry-level ombudservices for life insurance and general insurance. We understand that the CFSO will provide a single point of entry for consumers through the creation of a call centre that will function as a clearinghouse for complaints, concerns and questions from people about their dealings with financial services providers, including investment dealers, banks, mutual funds and life and property insurers.

It is important for financial services consumers that the CFSO's operations provide them with timely and efficient responses to inquiries, complaints and information requests. Having regard to the excellent track record of the OSC's Inquiries Unit & Contact Centre, we suggest that the OSC should offer to share its expertise in this area with the CFSO in order to help it avoid potential pitfalls and enhance its efficiency.

We believe there should be a mechanism in place that can refer matters to the appropriate regulatory authority for further investigation or action. Also, in situations where consumers are not satisfied by decisions reached by the OBSI, consumers should be informed of alternatives that they may pursue.

2. Communication of OSC's Value Proposition

Comments Received From Market Participants:

There is a perception among many market participants that OSC spending is not subject to adequate controls. OSC expenditures were $20,174,000 in 1997 (the last full year before self-funding) and $49,749,039 in 2002, representing an increase of 147 %.

Recommendation:

The comments we have received suggest that the OSC has not effectively communicated the public interest benefits resulting from its increased expenditures. The OSC's 2002-2003 Statement of Priorities states that the OSC will strive to ensure that its "regulatory interventions in Ontario are timely, balanced and proportionate to the risks involved", and that success in achieving this outcome will be measured to the extent that it is "...clear to investors, issuers and intermediaries that the benefits of regulation appreciably outweigh the costs of regulation." In order to communicate more effectively its value proposition, the OSC should endeavour to spell out for market participants and the general public the specific cost / benefit analytical procedures that it has in place that ensure that its expenditures are necessary, appropriately prioritized and designed to produce measurable and / or valuable benefits for industry participants and the investing public.

The OSC should consider procedures whereby qualified, independent consultants or advisors could be retained periodically by the Board of Directors to assist the Board in assessing management's proposed allocation of the Commission's resources in the fiscal year ahead and in evaluating the results of that allocation. Such procedures could assist the Board of Directors in its efforts to satisfy its duty under the *Securities Act (Ontario)* (OSA) to "oversee the management of the financial and other affairs of the Commission" (Section 3.1 (2)). Such cost control mechanisms in place at the Commission should be publicized.

Although the OSC's Annual Report sets out its regulatory objectives and achievements, the contents of this report are not well publicized. In order to more effectively counter negative

media comments regarding the regulatory activities of the OSC, a public relations program should be instituted to disseminate information regarding specific examples of the benefits resulting from such activities. For example, many prominent representatives of the securities industry and public corporations and their professional advisors understand and respect the value of the OSC's regulatory activities. Certain of these individuals could be encouraged to submit to the media op-ed articles or to undertake radio or television interviews with a view to expressing independent observations with respect to the value of the OSC's regulatory activities to the investing public and to the capital markets.

Before the OSC acquired self-funding status, market participants generally acknowledged that it was underfunded and understaffed but it was also criticized for not doing enough in specific areas, such as enforcement. The OSC's value message could be enhanced by illustrating how increased expenditures have been devoted to effectively addressing some of those specific criticisms.

The positive results of the Stakeholder Satisfaction Studies conducted by Ipsos Reid in 2000 and 2001 could be more effectively brought to the attention of the general public and the securities industry.

3. Investor Protection and Remedies

3.1 IDA's Arbitration Procedure

Comments Received From Market Participants:

A great many market participants told us that the IDA's arbitration procedure is flawed and unhelpful to retail investors. The arbitration process is adversarial and is often conducted by a retired judge whose role is to adjudicate on an impartial basis rather than to assist the investor making the claim. Consequently, only sophisticated investors are able to use the process without the assistance of counsel and expert witnesses and have a reasonable chance of success. The average investor does not have the financial resources to deal effectively with defensive actions mounted by a securities dealer that can afford high-priced legal counsel and expert witnesses. The IDA advertises that the administrative costs (filing fee, arbitrator's fee, room rental, other disbursements) are $3,000-4,000 for the typical dispute, which costs are generally borne equally by the securities dealer and the investor. However, the IDA does not advertise the fact that where the investor chooses to be represented by counsel and / or to retain expert witnesses, the total costs will be closer to $15,000 and that the investor is responsible for his / her own legal fees. In addition, investors are only entitled to claim a maximum amount of $100,000 with the result that investors are required to claim greater losses through expensive judicial proceedings that are beyond the means of the average retail investor. We were also told that the IDA should publish the decisions and reasons for decisions resulting from its arbitration proceedings because this would assist investors, and their advisors, in their understanding of how the IDA's arbitration system actually works in practice. This could be accomplished without identifying the clients of the financial institutions involved in the arbitration proceedings.

We were advised that the ombudsman model embodied in the Financial Services OmbudsNetwork has been a much more equitable and effective dispute resolution process, available for claims up to $350,000, and investors do not have to bear any administrative costs. We note that the Enforcement section on the IDA website informs investors about the dispute

resolution services of the Ombudsman for Banking Services and Investments as well as the IDA's arbitration procedure.

Recommendation:

Arbitration between parties of widely differing means is not a satisfactory mechanism for resolving investor disputes. The process can degenerate into a mini-trial where dealers are able to use the greater resources at their disposal to defend themselves. Consequently, we suggest that the Commission recommend to the IDA that it review its arbitration procedure with a view to correcting its perceived flaws and making it more helpful and less costly to investors. In particular, we recommend that the maximum claim be raised to at least $350,000 and that arbitration decisions be published without naming the clients involved in the proceedings.

3.2 Resolving Investor Complaints

Comments Received From Market Participants:

Representatives of individual retail investors who act as investment dispute consultants advised that the investor complaint process is not understood by such investors and is not as effective as it should be. This problem is exacerbated by the existence of multiple regulators having different degrees of authority over the activities of financial services providers.

Recommendation:

The OSC has published an excellent guide for investors that outlines the process for making a complaint. The OSC should update the guide to reflect changes that have taken place such as the expanded jurisdiction of the OBSI which enables the Ombudsman to serve clients of banks, member firms of the IDA, MFDA and IFIC and most federally regulated trust and loan companies. In addition, the contents and availability of the guide should be publicized more effectively and it should be delivered to retail investors on opening an account and be available at the offices of securities dealers, as well as on their websites.

The OBSI advises us that clients of investment counsel and portfolio managers are not currently able to take advantage of OBSI's dispute resolution services if they are not associated with an institution participating in the ombudsman program. We recommend that the OSC take the necessary steps to require all registered investment counsel and portfolio managers to participate in that program in order to provide their clients with an efficient, low-cost dispute resolution mechanism.

3.3 Restitution and Disgorgement

Comments Received From Market Participants:

A major complaint from investors is that the OSC and the SRO's (IDA, MFDA and RS Inc.) lack the power to determine the liability of a securities dealer to an investor and issue a restitution and / or disgorgement order. To seek redress investors must resort to the courts for claims in excess of the monetary limits applicable to the ombudsman and IDA arbitration remedies. Some suggested that the OSC should apply to the courts under s. 128 of the OSA for restitution orders on behalf of investors. This procedure has seldom been used.

Recommendation:

For the OSC to be able to properly and fairly determine the liability of parties to a dispute and make appropriate restitution orders it would have to conduct hearings in accordance with procedures and rules of evidence similar to those applicable in the courts. This would require fundamental changes in the Commission's hearing processes and Commissioners sitting on restitution panels would have to be specially qualified to act as quasi-judges.

Although we do not recommend that the OSC seek the power to order restitution at this time, we believe that it would be prudent to monitor the experience of the Financial Services Authority (FSA) which recently secured the power to order restitution. We do not recommend that the OSC apply to the court more frequently for restitution orders under section 128 of the OSA because the few previous applications under that provision have resulted in protracted, costly procedural quagmires.

Recent amendments to the OSA provide to the OSC the power to order offenders to give up amounts or profits they obtain as a result of the violation of securities laws. We encourage the OSC to make use of this disgorgement remedy in order to ensure that offenders do not gain financially from their wrongdoing. In appropriate cases, an independent trustee could hold any funds collected as a result of a disgorgement order. Aggrieved investors could seek from the trustee compensation for losses suffered by them through a streamlined adjudication process. Once the limitation period has expired, any unclaimed amounts could be directed to the Investor Education Fund.

The Commission has the power under the OSA to designate voluntary payments it receives to settle enforcement proceedings for allocation to or for the benefit of third parties. We recommend that the Commission consider the possibility of allocating all or a portion of such payments, in appropriate cases, to compensate investors for losses incurred by them as a result of the wrongdoing of the parties making the voluntary payment.

3.4 Know Your Client Rule (KYC) and Suitability

Comments Received From Market Participants:

Many investor complaints are related to matters dealing with KYC and suitability. Dealing with these complaints can be difficult due to deficiencies in the KYC forms that contain many vague terms. In addition, there is no mandated form. The forms used vary from one financial institution to another. There are no standard practices and procedures for the use of the form. Many customers are not given a copy of the form and some institutions do not even require them to be signed by the investor.

There was a consensus that account opening documentation is too voluminous and complicated and that it is not read by most clients.

Recommendation:

There should be a mandated KYC form with definitions that are more understandable. For example, investor representatives suggested that the word "sophisticated", as it relates to investment knowledge, could be replaced by words such as "experienced" or "knowledgeable".

In addition, registrants should be required to follow mandated procedures regarding their use of the form with investors. The form should require signature by the investor in all cases (with a copy retained by the investor) and all changes in the investor information contained in the form should require initialling by the customer. The form should also contain clear bold-faced instructions to the investor as to how to best use the form to protect themselves and how to pursue a complaint regarding their account, with the registrant and its internal ombudsman and, if necessary, with the OBSI. These measures would enhance investor protection and would enable registrants who are incorrectly accused of wrongdoing to defend themselves more readily.

The Commission and the IDA should consider requiring registrants to send clients copies of their KYC form annually together with a request to advise the registrant if the information in the form should be amended. If the registrant receives no response it can assume that no change is required. Information in the KYC form could be communicated to clients electronically.

The OSC and / or the IDA should review account opening documentation to determine how it can be simplified and reduced to its essential elements.

3.5 Rating of Equity Securities

Comments Received From Market Participants:

Commentators suggested that equity securities (shares, mutual funds, income trusts, etc.) should be rated on a scale of 1 to 10 as to anticipated performance, as is presently done with bonds as to risk. This would provide individual investors with an informed opinion as to the desirability of investing in a particular security.

Recommendation:

We believe that rating stocks is an idea that is worth pursuing. In the United States, Charles Schwab is currently rating stocks. Schwab recently announced that it will be following 3,000 companies with its system. Every week each company will be given a letter-grade rating of "A", through "F". Stocks that receive an "A" rating are expected to "strongly outperform" the overall market over the next 12 months, while those that receive an "F" rating are expected to "strongly under perform" the market. In addition, Schwab will have an equal number of ratings that fall into the "buy" category of A and B and the "sell" category of D and F. Although we admire Schwab's initiative, we believe that the OSC should encourage this activity to be undertaken by an independent entity which would operate in a way similar to the operations of Dominion Bond Rating Service and other bond rating services.

3.6 Canadian Investor Protection Fund

Comments Received From Market Participants:

We were told that securities dealers are advertising prominently the fact that they are members of the Canadian Investor Protection Fund (CIPF). The concern was raised that members of the securities industry are using their CIPF membership to give the impression to retail investors that their investments are safe, whereas in reality, CIPF membership is only relevant if the dealer becomes insolvent. We were advised that banks are not entitled to use the Canada Deposit and Insurance Corporation as a promotional tool and it was suggested that securities dealers should not be entitled to use the CIPF in that manner.

Recommendation:

The Commission should take the necessary action to prohibit the use by dealers of CIPF membership as a promotional tool.

3.7 Account Transfers

Comments Received From Market Participants:

We heard that there are many situations where IDA rules dealing with account transfers are not being followed. According to IDA by-laws, such transfers are supposed to be completed in 10 days or less. If there is a delay beyond 10 days, however, customers are not able to access their assets for the purpose of trading during that extended period. Consequently, there is the potential for significant losses, or lost opportunities for gains, by customers.

Recommendation:

It is acknowledged that some securities are not book-based and that actual paper must be transferred. In addition, some securities may be investments, such as term deposits, which cannot be transferred until maturity. However, investors should be able to gain access to their assets in order to trade. The OSC should require the IDA to work with its members to develop a mechanism to prevent harm to individual investors caused by delays in transferring their securities from one securities dealer to another. For example, dealers should not wait until all securities are capable of transfer before transferring those that can be transferred. The transferor and the transferee could deal with those securities in their possession until all of the securities in the account have been transferred.

4. Service, Culture and Processes

As referred to in the Introduction to our Report, under the headings "Comments Received from Market Participants" and " Task Force Recommendations", comments we received are described in the manner that they were articulated by those market participants we chose to consult and such comments should not be considered to be representative of the views of a majority of market participants. Having regard to the nature of our mandate, the comments we received were often critical of the OSC or its Staff. However, we also received complimentary comments. Our recommendations for improvement in certain areas should not be considered as a general or sweeping criticism by market participants or the Task force of the OSC, or of the abilities or diligence of its Staff.

4.1 Consultation / Communication with Market Participants

Comments Received From Market Participants:

We received a significant number of complaints that the OSC in many instances did not consult with market participants during the OSC's development of proposed regulatory initiatives, prior to publication of proposals for comment. We were advised that market participants do not always have time to read proposed rules and submit comments. More important, they said, is the fact that it is difficult to consider a proposed rule in the abstract and predict how it could affect novel transactions, financial products or fact situations. Some commentators suggested that the OSC appears to develop policy in a vacuum with no real understanding of the practical impact that certain proposals may have. We were advised that the request for comment process cannot substitute for "face to face" consultation.

We received comments to the effect that the Commission often has not communicated well with market participants. For example, we were told that the OSC enacted a certain Rule that did not address an issue which was extremely important to a certain group of market participants. The Commission indicated in the Commentary to the Rule that the issue would be reviewed and dealt with at a later date. The market participants told us that they had wished to meet with Staff to

discuss the regulatory issue and to offer to prepare background information on the issue in order to assist the Commission with its review of the matter. However, despite their efforts to contact a person or persons at the Commission with responsibility for the issue in question, they were unable to do so.

Recommendation:

With respect to the concerns that were expressed to us regarding the OSC 's consultation process, we note that OSC has in fact been establishing, on an increasing basis, consultative committees to obtain ideas and expertise regarding proposed policy initiatives, to hear on an ongoing basis concerns of particular market participant groups and to ascertain how previously implemented policies are affecting market participants. Currently, there are 16 active committees, including the Chair's Industry Advisory Group, the Fair Dealing Advisory Group and the Continuous Disclosure Advisory Committee.

The Commission should examine the manner in which Staff members consult with standing and ad hoc advisory committees in order to confirm that committee members are able to consider regulatory issues from first principles with a view to considering why certain activities should or should not be regulated and how a regulation should be structured in the most efficient and least obtrusive way possible. Such a consultation process allows market participants to be involved in a meaningful way in the formulation of Rules, policies and other forms of regulation.

All committees and advisory groups should be required to report to the Executive Committee, on a regular basis, regarding the progress of their deliberations.

Market participants suggested that because of the difficulty of predicting in advance how a proposed Rule will impact specific situations, the OSC should establish a formal "red tape" process designed to consider, *ex post facto*, the practical effect that a Rule has had in specific situations and to modify the Rule to eliminate its unwarranted or unintended effects. Initially, the OSC could issue "cookie cutter" exemptions on a no-fee basis (or a blanket ruling if the OSC is granted that power) and in due course the Rule itself could be amended to correct its unintended results.

Regarding the assessment of the effect of specific implemented regulatory initiatives, in November of 2002 the OSC issued a Report to the Ontario Minister of Finance entitled " A Study of the Economic Impact of OSC Rule 45-501 Exempt Distributions ". The objective of that Rule, which came into force on November 30, 2001, was to improve access to capital for small and medium-sized enterprises. The Report concluded that the Rule has had a very positive effect on such capital formation and that the study had identified further possible improvements in the regulatory framework which would be considered for implementation. We recommend that similar impact assessments of major regulatory initiatives be conducted on a regular basis.

With respect to the communication issue, OSC management should advise Staff of the importance of responding to inquiries by market participants, even if the response is merely to indicate that the message was received and that while there is nothing to report at the present time they will be contacted in due course. This customer-friendly, business-like conduct should be encouraged as opposed to a more bureaucratic, government-like approach.

4.2 Lack of Practical Knowledge / Industry Experience / Policy Basis of Rules

Comments Received From Market Participants:

Several commentators referred to instances where they believed that OSC Staff had difficulty comprehending the issues at play due to a lack of industry knowledge or experience. They suggested that some Staff members lack in-depth knowledge of the activities and products they are regulating and, as a result, they may impose unreasonable requirements or insist on the production of irrelevant information. It was suggested that the problem is compounded by a lack of understanding of the policy reasons that underlie specific regulatory requirements. We were told that this makes it difficult for Staff to explain to market participants why certain requirements must be met. It also makes it difficult for Staff, especially those at the junior levels, to know when to exercise discretion in deciding whether certain regulatory requirements should be relaxed, thereby resulting in an overly cautious approach when dealing with new products and applications for exemptive relief. Lack of practical knowledge also has a negative impact on sound policy development.

Market participants stressed that a major concern is the unwarranted delay they often experience in dealing with the Commission. The former Chairman of the SEC, Harvey Pitt, described this problem as follows: "My concern is that while we are educating ourselves we may be putting the world in a state of suspension and penalizing innovation."

We were advised that significant delays are often caused by the involvement of multiple OSC departments when complex applications are submitted. Often there is no clear ownership of the matter within the OSC, internal politics become involved and it is difficult for one manager to tell another manager that his or her Staff are "dragging their feet".

Recommendation:

The OSC should consider recruiting additional staff members who possess industry knowledge and expertise. This may entail enhancing the OSC's compensation structure in order to attract and retain qualified personnel.

It would also be advisable to take better advantage of the existing expertise and knowledge within the Commission. We recommend the development of a formal process designed to permit junior staff to tap into the knowledge and experience of senior staff. One possibility would be for senior staff to conduct internal continuing education seminars that would periodically update the skills and understanding of junior staff. Also, an improved dialogue between Staff and market participants would help them become more informed about the business realities of those they regulate.

Procedures should be instituted whereby one department assumes "ownership" of a matter and is responsible for ensuring that it is dealt with efficiently and expeditiously by the appropriate Commission Staff and / or the Commissioners.

4.3 Reward / Recognition System

Comments Received From Market Participants:

We were advised that in certain situations junior Staff, who propose that discretion be exercised creatively in order to accommodate market participants' business objectives, are often "shut down" when they bring their novel proposals to senior Staff for approval. This type of rule-bound, "bureaucratic" culture tends to stifle creativity and efficiency. Staff turnover at the junior levels in some OSC departments was said to be a major problem for certain market participants.

Recommendation:

The Commission should ensure that its employee compensation / recognition system is directed toward rewarding those employees who challenge the status quo, think "outside the box" and exercise discretion responsibly to accommodate novel situations and products. Even if their proposals are ultimately rejected, their attempts to be helpful to market participants should be recognized and encouraged. This cultural climate should be instilled from the top down. The senior executives and the managers should make it clear to Staff that their performance will be judged on factors that include creativity and responsible risk taking. According to OSC Employee Surveys, Staff members believed that the OSC is an excellent place to work based on most of the relevant criteria. However, the surveys revealed that many Staff members did not understand the standards and criteria by which their performance was evaluated. They did not perceive the evaluation process to be fair and they felt that merit was not properly recognized in the determination of promotions. We understand that more recent surveys have shown quite a marked improvement in this regard. When managers and individual Staff members agree upon annual goals and objectives for the Staff members, the agreements should emphasize the importance of the OSC's stated approach to achieving its mandate. That is, to be proactive, innovative and cost effective and to be timely, flexible and sensible in applying regulatory powers to a rapidly changing marketplace.

It would be useful for the Commission Executives to produce and personally deliver to junior and senior employees at departmental Staff meetings a Service Practice Protocol which would spell out best practices, designed to assist market participants, and would instil into employees a sense of urgency, responsiveness, efficiency and team-work.

Regarding staff turnover, we understand that there has been a substantial reduction in the levels of staff turnover.

4.4 Dealing with Innovative and Unconventional Products

Comments Received From Market Participants:

Some industry participants told us that they are unable to be as innovative or responsive to market developments as they could be if Staff were less reluctant to deal creatively and expeditiously with new or unconventional products or ideas. We were told that Staff does not like to deal with new products or concepts that do not fit comfortably into the existing regulatory scheme or that they do not understand. They said that when an applicant seeks to "push the envelope" many Staff members are automatically suspicious that they are being "hoodwinked". These problems have arisen more frequently in the investment funds area, partly due to the broad regulatory definition of mutual fund. Applications for relief must show why the rules for conventional mutual funds should not be applied to new specialty products such as exchange-traded funds or closed-end funds. Practitioners feel that Staff is of the view that exemptive relief should be granted only sparingly. We were advised that Staff is typically reluctant to sit down and discuss issues of concern, preferring to gather information through a prolonged exchange of correspondence. We were also told that there is a reluctance on the part of Staff to approve applications for fear that they might make a mistake with the result that investors might be harmed and Staff will be held accountable.

We heard that Staff's lack of understanding also results in burdensome delays because applicants must spend time bringing them up to speed so that they can fully grasp the relevant issues.

A concern was expressed that practitioners often receive an initial positive reaction from senior managers regarding the relief being sought only to find that later when the matter is being dealt at lower levels, junior Staff is unaware that senior Staff did not have a problem with the proposal.

Recommendation:

The OSC should establish a New Products Committee made up of senior Staff from various areas with the necessary breadth of experience to expedite the review of novel applications. Under such a scenario, there would be dedicated Staff responsible for reviewing applications dealing with innovative products. Any issues that may arise would be dealt with in face-to-face meetings between the applicant and the New Products Committee. Staff should be reminded often that, in addition to its mandate to protect investors, the OSC has a mandate to foster market efficiency. If reputable market players come forward with new products or proposals, they should be allowed to proceed as long as there is adequate disclosure and no clearly identified regulatory risk.

Senior Staff should communicate to junior Staff the fact that they have reviewed a proposal conceptually with an applicant and that it seems to be acceptable. Managers should require their Staff to advise them immediately upon receipt of inquiries or applications involving novel or difficult issues.

4.5 Adversarial Approach

Comments Received From Market Participants:

We received complaints regarding the attitude or tone adopted by some OSC Staff members when dealing with market participants. In one instance, the OSC sent to a registrant a form letter reminding it that its audited annual financial statements were due to be filed by the end of the month, 24 days after the date of the letter. The letter stated that if the statements were not received within the specified time period, the OSC would "have no alternative but to forthwith initiate action to suspend the registration" of the registrant. This was the first letter received by

the registrant regarding the filing date and there had been no indication that the registrant did not intend to file the statements within the required time frame. The registrant indicated to us that it found this approach to be offensive and unwarranted and that it typified the OSC's attitude in the conduct of its regulatory functions.

Practitioners told us that they often get the impression from some Staff members that they are doing them a great favour merely by returning a telephone call. We were encouraged to advise the Commission to impress on Staff, "from the top down", the need to see practitioners as customers to be served with a view to facilitating the transactions of their clients.

We were told that a senior securities practitioner asked a Staff member about the interpretation of a particular rule and was told, "You make the big bucks, it's your call!" On another occasion the response to a similar question was, "Go read the rule!" There is a feeling among practitioners that before the OSC became self-funding and had fewer Staff members it was possible to develop closer relationships with certain Staff members which were conducive to healthy dialogues designed to solve problems and reach creative outcomes expeditiously. Some commentators were of the view that self-funding has resulted in a significant increase in the numbers of Staff and a more bureaucratic culture in which communication is primarily through written or electronic correspondence.

Recommendation:

The general tone of the communications referred to above was quite adversarial. A greater effort must be made to ensure that market participants, including practitioners, are treated like valued customers. Staff should be required by senior management to adopt a courteous, business-like approach to communications with market participants. Standard form letters should be reviewed and amended accordingly.

4.6 Reluctant to Escalate Problems to a Higher Level of Authority

Comments Received From Market Participants:

We were informed that there is reluctance on the part of those who frequently deal with the Commission to escalate issues and concerns to higher levels of authority when roadblocks are encountered. This means that many complaints about the way that the OSC operates may never become known to senior management thus making it difficult to evaluate Staff properly and to respond in an effective manner to problems that need to be rectified. Market participants have explained that, in certain situations, they have received advice from their legal counsel against escalating a matter even though there might be a legitimate issue at stake. The fear is that, by going over the head of a Staff member, the market participant and / or the practitioner may experience difficulties and unnecessary complications in connection with future applications. For this reason, such action is reserved only for situations where it is deemed to be absolutely necessary. Consequently, many important matters languish at the junior Staff level which one market participant characterized as a "black hole".

Recommendation:

Applicants should not be put in position where they feel that they might suffer reprisals if they go above the head of the reviewing Staff member. An automatic escalation process should be put in place that would allow applicants to take a matter, or require Staff to take a matter, to a more senior level to resolve any issue that has not been settled within a specified period of time. This process should be made known to market participants and Staff through an OSC Notice.

4.7 Access to a Commissioner Regarding Prospectuses, Exemptions and Registration

Comments Received From Market Participants:

OSC Notice 15-701 sets out an informal procedure for applicants or issuers to request a meeting with a Commissioner, together with Staff, in an attempt to resolve differences of opinion between the market participant and Staff. The Executive Director's consent is a prerequisite to the holding of the meeting. Most market participants (and their advisors) to whom we spoke

were not aware of this procedure and it is seldom used. We were told that there is sometimes a concern that prior to the meeting with the Commissioner, Staff has indoctrinated the Commissioner who then comes to the meeting with a bias in favour of Staff's position. Some practitioners advised us that they are often reluctant to request a meeting with a Commissioner because Staff members may take personal offence to the fact that the request has been made.

Recommendation:

This informal appeal procedure should be employed to a greater extent in order to reduce unwarranted delays in the receipt by market participants of OSC decisions with respect to contentious issues. A negative opinion of the Commissioner could persuade the applicant not to waste the time and expense of a formal Commission hearing. Conversely, a positive opinion or a suggested compromise could result in Staff supporting the applicant's position, which would expedite receipt of the order or decision required by the market participant. If the availability of the procedure is widely known, then Staff should be motivated to take more creative approaches to accommodate market participants' business objectives in order to avoid the possibility that a Commissioner will be able to resolve the problem in a manner that Staff should have been able to envisage.

Therefore, the availability of informal access to a Commissioner and a summary of the procedure should be publicized on the OSC website and through groups of market participants and practitioners such as the Securities Advisory Committee. In exercising his discretion as "gate-keeper" for access to a Commissioner, the Executive Director should, as a general rule, consent to the convening of a meeting unless he considers the request to be clearly frivolous or without merit. With respect to the perception of possible Commissioner bias, we understand that Commissioners who are scheduled to attend such meetings are briefed by Staff in advance as to the factual background and the issues to be discussed but do not hear Staff's arguments on the merits. This practice should be strictly adhered to. Staff should be advised by the Executive Committee that they must not take offence if market participants take advantage of this procedure that is designed to make the Commission's operations more efficient and equitable.

The OSC's Secretary advised the Task Force that an unwritten and unpublished informal procedure exists whereby an applicant who disagrees with Staff's rejection of its application may be informed by the Executive Director that the matter can be taken before a quorum of Commissioners who may decide that Staff's decision should be overturned. In that event, provided a Vice-Chair is part of the quorum, or his or her consent is obtained, the quorum of Commissioners can issue a binding order or decision. The advantage of this procedure over the Notice 15-701 procedure is that the applicant can obtain an actual decision which is not immediately available under the Notice 15-701 procedure.

We recommend that both procedures be made available to market participants at their option. The Commissioner quorum procedure should be reduced to writing and included as an alternative procedure in Notice 15-701 or in a companion Notice.

4.8 Telephone and E-mail Accessibility

Comments Received From Market Participants:

A common complaint we received regarding the OSC was that Staff often do not return telephone calls and e-mails. Market participants said that they are frustrated by the fact that it is difficult to contact Staff by telephone. For this reason, those who routinely contact the Commission will come to rely on two or three people who respond to calls in a timely fashion and will try to deal exclusively with them. The advent of voicemail has no doubt contributed to this problem.

Recommendation:

Senior management should encourage the practice of retrieving voice mail and returning the calls at regular intervals. We recommend the establishment of protocols for the handling of telephone calls, similar to those which exists in the Inquiries Unit & Contact Centre. In response to our previous oral interim reports to the Executive Committee and the Commissioners, we understand that senior management has instituted a telephone training program for Staff designed to produce a significant improvement in this area.

The Commission's alphabetical and departmental telephone directories should be posted on the OSC's website and kept up to date. The departmental directory should indicate the titles and functions of Staff members.

4.9 Customer Relationship Management

Comments Received From Market Participants:

Market participants expressed to us their feeling that many Staff members are not service-oriented or customer-friendly and, as previously mentioned, can even be adversarial. Practitioners and corporate advisors feel that some members of Staff have lost sight of the fact that a significant part of their jobs is to service the street efficiently so that it can in turn provide expeditious and creative service its clients. They said that this may stem from the fact that Staff has a tendency to treat market participants as persons whose activities they regulate under fixed rules and not as customers to be assisted in conducting their businesses in compliance with a regulatory system that can be adjusted to accommodate their needs.

Practitioners told us that they will often explain to their clients that it will likely be too costly to deal with the Commission because it is not possible to predict the length of time that it will take to resolve all issues that may be raised by Staff, nor is there a reasonable degree of certainty of a favourable outcome. Practitioners told the Task Force that certain junior Staff members, who do not wish to come to grips with matters on their desks, will inundate the market participants with requests for additional information. When senior Staff or Commissioners ask for status reports, the answer is, "The ball is in the applicant's court." They said that this is particularly problematic with applications that deal with new products and novel issues. Some members of Staff are responsive and creative but there are others who are reluctant to exercise discretion.

Recommendation:

In order to ensure that Staff regulate with the customers' needs and objectives prominently in mind, a change in Staff culture and attitudes must be instilled from the top down. Staff members should be rewarded, through compensation enhancements and promotions, for conducting

themselves in a manner that demonstrates their understanding that the ultimate consumer of their services is the investing public and not the intermediaries with whom they deal on a day to day basis.

We understand that the OSC has recognized the need for a greater emphasis on customer service and to this end Staff has been receiving customer service training. We would also note that the Inquiries & Contact Centre is a very good model in terms of its customer service focus. The Centre has adopted standards and procedures for dealing with all contacts that they receive.

We recommend that the establishment of similar standards and procedures for dealing with customers be extended throughout the organization. The uncertainty as to how long an application will take can be dealt with by ensuring that timelines for dealing with matters are instituted and publicized and that Staff are required to respond to applicants within those timelines. It might not be necessary for Staff to provide a definitive answer, but applicants should be given an estimate of how long the process will take. There should be a systematic way of measuring and monitoring the level of customer service provided by the OSC. This could be done through the implementation of periodic customer service audits. Client contact points should be subject to audit to ensure that prescribed service standards, including time-lines, are being met on a reasonably consistent basis.

4.10 Electronic Delivery of Hearing Materials

Comments Received From Market Participants:

The Statutory Powers Procedures Act and the OSC Rules of Practice provide for hearings to be conducted in writing or by electronic means. These procedures are used whenever it is expedient to do so; for example, where there are no witnesses or where the parties are located outside of Toronto. There have been many requests, however, for the OSC to allow hearing materials to be delivered electronically in all cases.

Recommendation:

The Competition Tribunal has successfully moved from a paper-based system to an electronic filing system and now requires that all documents be filed with it electronically. The OSC currently converts filed hearing documents to electronic form and consequently bears the cost of the conversion. The OSC should continue its efforts to design a system that will permit, rather than mandate, the electronic filing of hearing materials in all cases.

4.11 Investment Funds Department Staffing

Comments Received From Market Participants:

We received comments to the effect that the Investment Funds department was perceived to be greatly understaffed. We were told that Staff is fully occupied with routine matters and that the department does not have enough resources to do the background thinking and policy analysis to deal with new developments and products. This makes it difficult for the department to keep up with the pace of innovation in the investment funds area.

Recommendation:

A review of the department's staffing needs should be conducted and a report submitted to the Executive Committee.

5. Commission Governance

Comments Received From Market Participants:

The Commissioners comprise the Board of Directors of the Commission. They have a statutory duty to administer the regulatory provisions of the OSA. Under the OSA, the Board also has a duty to oversee the management of the financial and other affairs of the Commission and to ensure that the Commission's activities are conducted in an "open and efficient" manner. (Sections 3.1(2) and 2.1 clause 3). These duties are analogous to the duties of care and supervision of management imposed on directors of business corporations. Market participants expressed a concern that the Board of Directors appears to focus most of its efforts on the Commission's regulatory mandate and does not devote sufficient attention to the oversight of management and the operational efficiency of the Commission's activities.

Recommendation:

We note that the Board of Directors of the Commission has in fact established three standing committees of the Board: (1) Audit and Finance; (2) Nominating and Governance; and (3) Compensation. The Board of Directors should review, on a continuing basis, the manner in which it and its committees exercise oversight of the management and operations of the Commission with a view to determining whether improvements are warranted. The Nominating and Governance Committee could be given a mandate to conduct such reviews and to report to the Board periodically.

In order to ensure that the Board continues to include an appropriate number of members with business expertise and practical business experience, the Nominating and Governance Committee should confirm that its process for selecting new Board members, including the criteria for Board membership, are designed to achieve that objective. Commissioners with extensive business experience could be appointed to a new Operations Committee of the Board. The Committee's mandate could be to assist management and provide guidance regarding issues such as culture, operational efficiency, systems, procedures and customer relationship management.

6. Policy Development

6.1 Process

Comments Received From Market Participants:

Many market participants have expressed the view that the OSC does not appear to be rigorously applying appropriate standards when determining whether or not to propose a new Rule, amend an existing Rule or eliminate an existing Rule. We were told that the OSC often pays "lip service" to its cost / benefit analyses and should identify quantitative or economic data to justify new Rules and regulations. For example, where investor protection is at issue the focus should be on the number of complaints that have been made and / or the number of investors who have suffered economic loss as a result of the activity or product proposed to be regulated.

Recommendation:

We concur with suggestions we received to the effect that the OSC should ensure that the following principles and standards, among others, are taken into account when considering proposed or existing Rules.

- does the proposed instrument describe precisely the perceived regulatory problem?
- does the instrument clearly delineate delegation of duties and accountability?
- is there an ongoing review of forms and processes to ensure that the standards are being followed?
- is the Rule written in plain language?
- has there been sufficient consultation with those who would be affected by the Rule?
- has the Rule been subjected to a cost / benefit analysis using an appropriate method?

Following such a protocol enhances the probability that Rules and regulations are promulgated on a sound basis. We note that the OSC's Annual Report 2002 indicates that before initiating regulatory activities the Commission now conducts a comprehensive cost / benefit analysis designed to evaluate the merits of proposed initiatives and to justify the allocation of OSC resources.

6.2 Involvement of Commissioners

Comments Received From Market Participants:

Some commentators suggested that non-executive Commissioners are normally not involved in the initial stages of the policy development process to the degree that they should be. During general Commission meetings, proposed Rules or policies, in the form of concept memoranda prepared by Staff, are tabled for discussion and approval. This process fails to effectively tap into the expertise of non-executive Commissioners at early stages of the formulation of regulatory policy and initiatives. Bi-monthly general meetings do not afford Commissioners sufficient opportunities to consider and discuss complex regulatory issues in depth.

Recommendation:

Better use should be made of the expertise of non-executive Commissioners by getting them involved in the policy development process at a much earlier stage. If a project initiative is in an area where certain Commissioners have expertise, Staff should consult them at the commencement of the deliberative process.

7. Registration Issues

7.1 Registration Process

Comments Received From Market Participants:

One of the most significant areas of complaint has been registration. It is viewed as being a costly, bureaucratic and time-consuming process. Complaints typically deal with the type and amount of information requested and the fact that applications are rejected and returned because of minor errors or omissions thereby causing additional cost and delay. Much of the information that is requested does not seem to be relevant or useful to the regulator. For example, we were told that industry savings of up to $10 million could be achieved by removing the requirement to submit the registrant's photograph with each registration application.

Recommendation:

The National Registration Database (NRD) is expected to be a substantial improvement in the registration process. For example, the NRD should reduce delays related to incomplete applications that currently must be sent back to applicants for further information. However, the amount of information required under the NRD system still appears to be greater than is necessary partly because of differing requirements in various jurisdictions. Registration requirements should be considered from first principles as a national project to determine the minimum amount of information that is essential for effective regulation of registrants. This determination could be based in part on an analysis of the types of information, currently filed by registrants, that regulators actually consider when regulatory problems arise with respect to registrants.

Regarding the requirement for registrants' photographs, we understand that with the implementation of the NRD, currently scheduled for March of 2003, the OSC will not require photographs with applications and that this will probably be the case in all other jurisdictions other than Manitoba and perhaps Newfoundland.

Certain registrants have suggested that in order to achieve the full benefit of the NRD its implementation should be delayed until: (1) registration policies and procedures are harmonized across the country; and (2) a mutual reliance system is instituted to permit an applicant's jurisdiction of residence to approve registration applications on behalf of all jurisdictions in which the registrant desires to be registered. The practicality of this suggestion should be examined by the OSC with the CSA, taking into account the cost of changing the NRD to accommodate harmonization and mutual reliance if and when they are achieved.

7.2 Registration Passport

Comments Received From Market Participants:

Registrants are required to comply with the registration requirements of every jurisdiction in which they intend to carry on business. This onerous requirement is caused by the lack of acceptance of a "home jurisdiction" concept.

Recommendation:

The introduction of a "registration passport", allowing registration in one province to serve as registration in the other jurisdictions, would constitute a significant reduction of the regulatory burden on market participants.

7.3 Payment of Fees

Comments Received From Market Participants:

Where the OSC requires that a fee be paid in connection with the filing of an application or document, a separate cheque must be submitted with the filed material. Consequently, where multiple registration applications are being filed at the same time, individual cheques must be submitted in respect of each registration. This can result in thousands of cheques being issued and processed at great expense to the securities firm.

Recommendation:

The situation will be addressed through the implementation of the NRD, which will allow payment in bulk through direct debit. There may be other instances, however, where multiple applications are being made and, therefore, multiple cheques need to be submitted. One possible suggestion would be to allow payment through the use of a single cheque with a schedule attached to provide a breakdown of all the charges. Another suggestion would be to allow for the use of a monthly invoice system.

7.4 Concerns Relating to NRD

Comments Received From Market Participants:

The OSC has been publicizing the benefits that the NRD will provide to market participants. Many market participants expressed to us serious doubts as to whether these benefits will in fact be achieved since they view the NRD as an automation of the current flawed registration system. This viewpoint may stem from the fact that the NRD is not fully understood. Market participants are disappointed about not being consulted earlier in the development of the system since they will ultimately have to populate, use and pay for the system.

Recommendation:

The NRD appears to be worthwhile project. Based on the comments we received, we recommend that the OSC involve market participants early in the development of such projects so that they can have meaningful input into matters that will directly affect them. Such early participation would enhance the probability that market participants will "buy in" to the regulatory initiative. In addition, stakeholders should be kept fully informed on an ongoing basis regarding the progress of, and changes in, the project.

7.5 Need for Individual Registration

Comments Received From Market Participants:

Some market participants seriously question the need for the registration of individuals. As an alternative, they suggest that securities firms could be held responsible for ensuring the fitness and proficiency of its sales representatives. One major financial institution informed us that it incurs costs of approximately $20 million a year for registration of individuals across the nation.

Recommendation:

Discontinuing individual registration and making firms responsible for the conduct of employees should be explored. This would only be feasible if the same approach were to be adopted in all Canadian jurisdictions. Firm-only registration is the approach taken in Australia.

7.6 Automated Trading system (ATS) Registration

Comments Received From Market Participants:

To operate an ATS, a dealer must be fully registered and be: (1) a member of the IDA; (2) an exchange; or (3) a member of an exchange. Currently, no ATS is operating under the exchange designation. In order to meet the IDA's Canadian residency requirement, foreign dealers are required to incorporate a new Canadian company and maintain an office in Canada. Previously, firms that operated an ATS in Ontario could rely on an international dealer registration. However, under the new ATS rules this type of registration is no longer adequate. All ATS operators will be required to register as full dealers. These requirements are considered to be quite burdensome.

Recommendation:

We recommend that this situation be reviewed to determine whether the perceived burdens can be reduced or eliminated.

7.7 Transfer of Registrants

Comments Received From Market Participants:

A problem in the registration area is the transfer of individual registrants from one firm to another. It takes too long to complete and results in the registered representative being out of business for a period of time since they cannot provide advice to their clients until the process is completed.

Recommendation:

We are advised that in fact the OSC has addressed this problem by issuing temporary registrations effective on the date that the registrant moves to the new firm.

8. Compliance Issues

8.1 Co-ordinating and Expediting Compliance Reviews

Comments Received From Market Participants:

Registrants that carry on business in multiple jurisdictions are subject to multiple audits and compliance reviews. This can often result in conflicting remedial action requirements. Registrants are also frustrated by the time frame for OSC audits of Investment Counsel and Portfolio Managers and SRO audits of other registrants. Certain Staff members also believe that the OSC review system could be improved. The actual review usually takes about two or three weeks, but the compliance report is not delivered to the registrant for about six months. However, the registrant must respond to the report within thirty days. Registrants and Staff advised us that 95% of the review is usually completed in the first two to three week period and that 5% of the review involves legal and accounting reviews by various groups within the Commission. Often these groups do not accord priority to these matters and delay results. It is questionable, apparently, whether such legal and accounting reviews are necessary as most of the issues in most reviews are standard and can be dealt with by the OSC compliance reviewers themselves.

Recommendation:

It would be helpful if the Commissions could share information and co-ordinate their efforts so as to eliminate unnecessary duplication of compliance reviews and conflicting remedial requirements. Given that it is typically the head office of the registrant that produces all of the information requested, the mutual reliance concept could be employed to permit the Commission in the head office jurisdiction to conduct the bulk of the compliance review on behalf of the other Commissions. Field reviews of branch offices in other jurisdictions could be performed by the Commissions in those jurisdictions.

The Commission should study the added value of legal and accounting reviews of all compliance audits to determine whether the process can be streamlined. For example, it might be appropriate to rely on the compliance reviewers to identify specific material legal or accounting

issues and then consult the lawyers and accountants with respect to those issues. In addition, the Commission should consider extending the thirty-day response period which registrants find particularly onerous. The OSC should consult with the SROs to determine if their audit procedures could be streamlined.

8.2 Responsibility of Compliance Officers

Comments Received From Market Participants:

Compliance officers should have a greater degree of responsibility and accountability to audit committees and securities regulators for the compliance procedures in place at their firms and for infractions that occur on their watches. We were advised that many compliance officers would welcome such changes because senior management often will not approve compliance programs and systems proposed by the compliance officers because of the time and cost involved. If the compliance officers were to be accountable to the audit committee of the firm and the Commission they would have the authority to insist upon the implementation of adequate compliance procedures.

Recommendation:

Securities industry compliance would be enhanced through the strengthening of the compliance officers' authority and responsibility. It has been suggested that compliance officers should have a direct reporting obligation to the firm's audit committee and a dotted-line obligation to report serious infractions to the Commission. We recommend that the whistle-blowing provisions include provisions to protect the compliance officers from reprisals resulting from their reports of infractions to the Commission.

In addition, when a serious infraction occurs the regulatory body should investigate the compliance procedures and the actions of the compliance officer to determine if the controls failed and, if so, why they failed. Where appropriate, compliance officers should have enforcement action taken against them.

8.3 Leverage Disclosure

Comments Received From Market Participants:

National Instrument 33-102 - Regulation of Certain Registrant Activities requires registrants to deliver a prescribed written risk disclosure statement to retail clients regarding the use of borrowed money to purchase securities: (1) when an account is opened; or (2) when the registrant recommends borrowing or becomes aware that the client is using borrowed funds to invest. Each time a registrant is asked to execute a purchase for a client who is using borrowed funds, the registrant must first obtain a written acknowledgement from the client that he/she has read the risk disclosure statement. The registrant is not required to obtain this acknowledgement if within the previous six-month period, the statement has been delivered to the client and the registrant has received a written acknowledgement that the client has read the statement. The Companion Policy to NI 33-102 indicates that the leverage disclosure obligation applies whether or not the borrowed funds were specifically borrowed for the purpose of purchasing securities. In addition, the Policy provides that disclosures and acknowledgements may be delivered by electronic means.

The leverage disclosure obligation in NI 33-102 does not apply to margin account purchases by retail clients if the account is maintained with an SRO member who operates the account in accordance with the SRO's rules. The Companion Policy indicates that the rationale for this exemption is that the SRO rules may already require leverage disclosure on the opening of the margin account.

Registrants have a great deal of difficulty persuading clients to sign and return acknowledgement forms after the initial opening of the account. Many registrants deliver the leverage disclosure statement and try to obtain the client's acknowledgement every six months in order to avoid having to deliver the statement and obtain the acknowledgement each time the client makes a leveraged purchase of securities. This is seen as an unnecessary and costly burden on the securities industry.

Recommendation:

The disclosure / acknowledgement activity on each leveraged purchase and every six months could be eliminated as follows. A risk disclosure statement and an acknowledgement that the client has read it could be incorporated in the KYC form, which must be signed by the client at the account opening stage. The first time that the client proposes to use any borrowed funds to purchase securities, before executing the trade, the registrant could provide the client with another copy of the risk disclosure statement by facsimile transmission or e-mail (in most cases), which would provide the registrant with automatic evidence of receipt by the client. Having acknowledged reading the statement on opening of the account, there would be no need to again require confirmation that the client has read the statement. There would be no requirement to repeat this process in connection with subsequent leveraged trades unless the client is advised by the registrant to borrow new funds or increase the amount of his / her borrowings (or the registrant becomes aware that the client intends to do so) and the registrant knows that the borrowed funds will be used by the client to purchase securities regardless of the original purpose of the borrowing.

The leverage risk with margin accounts is similar to the risk involved where external borrowing is used to purchase securities. Accordingly, we recommend that registrants be required to deliver to margin account clients a leverage disclosure statement annually. No acknowledgement by the client would be required. The Commission should ensure that the IDA and the MFDA have appropriate leverage disclosure requirements for registrants in connection with margin accounts they operate for clients.

8.4 Compiling Cease Trade Orders (CTOs)

Comments Received From Market Participants:

It would be useful if the Commission could provide market participants with a consolidated list of cease-traded issuers and individuals. Currently, if an investor is cease-traded but goes on trading, regulators will sanction the brokers for executing the trades. We have been informed that in the U.S. the exchanges are responsible for keeping track of CTOs.

Recommendation:

We understand that the CSA is currently working with RS Inc. to develop, implement and operate a national CTO database. This effort should be expedited.

9. Investment Funds

9.1 Pooled Funds

Comments Received From Market Participants:

Registration as a portfolio manager permits a person or company to manage the investment portfolio of a pooled fund. It does not permit the person or company to sell units of the pooled fund. While sections 2.1 and 2.12 of Rule 45-501 provide exemptions from the registration requirement with respect to trades or private placements to an accredited investor or to an investor who invests no less than $150,000, section 3.4 of Rule 45-501 states that only a limited market dealer can rely on such exemptions. Hence, a portfolio manager must also register as a limited market dealer and pay the additional registration fees.

Recommendation:

Investment counsel and portfolio managers would like the Commission to study whether there is a sound policy basis for requiring them to register as limited market dealers in order to be permitted to sell units of their own in-house pooled funds. Their position is that registering as a limited market dealer does not add any additional protections for investors. We understand that prior to the introduction of universal registration in 1987, registration was not required to trade exempt securities. Since then persons trading only exempt securities must be registered and most of them register as limited market dealers. There are no reporting or capital requirements for limited market dealers. If the Commission cannot conclude that this registration requirement actually provides additional protection to clients of registered investment counsel and portfolio managers selling units in their own pooled funds, we recommend that the requirement be eliminated.

9.2 Access to Pooled Funds for Small Investors

Comments Received From Market Participants:

It was suggested that there should be an exemption to allow investors with limited funds to have access to pooled funds thereby affording them greater diversification and lower costs without incurring any substantial degree of risk. As things currently stand, only wealthy investors or those who can afford to invest $150,000 are able to obtain the benefits that pooled funds provide. Many young investors can only afford to invest amounts in the range of $25,000 to $50,000 and are therefore denied access to the benefits of pooled funds.

Recommendation:

We suggest that this concern be addressed during the Commission's proposed review of the entire pooled fund regime.

9.3 Separate Trust Account for Mutual Funds

Comments Received From Market Participants:

National Instrument 81-102 - Mutual Funds- requires mutual fund dealers to maintain multiple trust bank accounts. In addition to keeping general corporate funds separate from client funds, principal distributors and participating dealers must keep cash received / paid in respect of the purchase / redemption of mutual fund units separate from cash received / paid in respect of the purchase / redemption of any other type of security. The mutual fund dealer community generally does not have a problem with keeping the operating bank account separate from their trust bank account but they would prefer having a single, book-based trust bank account for all of the products that they sell. This would satisfy the primary objective of avoiding a commingling of client funds with general corporate funds. IDA members are exempted from this requirement to maintain multiple trust bank accounts.

Recommendation:

It is not apparent that having multiple trust bank accounts adds any additional investor protection but it does increase the administrative burden faced by mutual fund dealers. The OSC should consider whether this requirement is in fact necessary from a risk reduction standpoint.

9.4 Interest from Trust Accounts

Comments Received From Market Participants:

National Instrument 81-102 does not allow mutual fund dealers to retain interest earned on cash held in trust accounts. The interest must be paid either to security holders on a *pro rata* basis or to the mutual funds to which the account pertains. The dealers usually pay the interest to the fund companies for the benefit of the fund. The amounts involved are minuscule and the cost to issue many small cheques is inordinate. The fund companies that receive the money also have problems in dealing with these payments. They usually record them as a correction to the fund's net asset value but this constitutes an administrative headache. Mutual fund dealers have tried to avoid these problems by using non-interest bearing trust accounts but this procedure is not permitted under the regulations.

Recommendation:

The OSC should consider whether there is some way of dealing with this problem. For example, the interest could be tracked and remitted annually to the Investor Education Fund.

9.5 Simplified Mutual Fund Prospectus (Mutual Funds, Income Funds, Scholarship Funds)

Comments Received From Market Participants:

Despite revisions that have been made to the mutual fund prospectus rule to provide for simplified prospectuses, they are still viewed as being too long and complex and the perception is that investors rarely read them.

Recommendation:

The simplified prospectus appears to be a vast improvement over the previous form of prospectus but the possibility of further improvements should be investigated.

9.6 Restriction on Purchases of New Issues

Comments Received From Market Participants:

Mutual funds cannot buy a new securities issue within 60 days of issue if a dealer related to the issuer is involved in the distribution. The market is relatively small and the bank owned mutual funds and dealers are very large so there may be situations where deals cannot be completed because there are not enough unrelated purchasers available.

Recommendation:

We understand that the OSC has instituted a policy whereby exemptions from the 60 day requirement are granted in situations where the percentage of the new issue being purchased by the mutual fund is small enough that it does not raise any conflict of interest concerns. We recommend that these exemptions continue to be granted. The CSA's mutual fund governance concept proposals, if implemented, may deal with such situations by making the independent governance agency of the mutual fund responsible for ensuring that there is no conflict of interest involved in the purchase decision.

10. Corporate Finance

10.1 Usefulness of Prospectus

Comments Received From Market Participants:

Prospectuses are viewed by many as being unnecessary because they are not understandable by most retail investors and are generally not read by investors unless something goes wrong. There are usually only three or four salient points in a prospectus but they get lost in all the detail.

Recommendation:

The disclosure requirements for prospectuses should be simplified and focused upon the essential items of interest and usefulness to investors.. Consideration should also be given to eliminating the prospectus requirements entirely, except for IPOs, thereby requiring investors to rely upon the continuous disclosure record of the issuers in making their investment decisions. In this regard, it would be necessary to assess the degree to which the independent due diligence process conducted by underwriters and their legal counsel on behalf of investors, each time corporations issue new securities under a prospectus, contributes to the accuracy and completeness of the continuous disclosure records of corporate issuers.

10.2 Insider Reporting / Title Inflation

Comments Received From Market Participants:

"Title inflation", which results from granting the title of "Vice-President" to many employees solely for marketing or promotional purposes, causes unnecessary insider trading reporting burdens. Some large issuers, such as chartered banks, have hundreds of employees who must file insider reports although they are never in possession of price-sensitive undisclosed material information. Reporting requirements should focus only on senior officers and employees who, because of the nature of their work, actually have, or are likely to have, access to material undisclosed information from time to time. The insider reporting rules in the United States, the United Kingdom and Australia do not require so-called "nominal" vice-presidents to file insider

reports. We have been told that about 2,500 Royal Bank employees are caught by the definition of "insider" whereas Citibank in the United States only has about 50 employees who are required to report despite its much larger workforce.

Recommendation:

In March 2002, the CSA published CSA Staff Notice 55-306 – Applications for Relief from the Insider Reporting Requirements by certain Vice-Presidents. This Staff Notice, sets out the circumstances where Staff will support applications for relief from the insider reporting requirements for an individual who is a "nominal vice-president". In addition, the CSA is working on a proposed amendment to National Instrument 55-101 – Exemption from Certain Insider Reporting Requirements to provide an exemption for "nominal vice-presidents" which will eliminate the need to file applications for exemptive relief. Until this amendment is in force, we recommend the granting of so-called "cookie-cutter" exemptions with a waiver of the associated fee in order to minimize the current unnecessary reporting burden.

10.3 Unnecessary Duplication of Continuous Disclosure (CD) Reporting

Comments Received From Market Participants:

There is an unnecessary burden faced by SEC issuers that take over Canadian companies using their own shares as consideration. They will typically end up having 20% to 30% of their shareholders resident in Canada and will therefore become a reporting issuer. These issuers are typically given an exemption from most OSC requirements, but their continuous disclosure documents must be filed on SEDAR. This is the case despite the fact that this disclosure is available on EDGAR. This duplication does not appear to have any policy basis.

Recommendation:

Given that these SEC issuers are exempted from most other Canadian regulatory requirements, the OSC should consider accepting the EDGAR filings as compliance with the SEDAR filing requirement. SEDAR could contain notices to Canadian shareholders of these corporations to the effect that that their continuous disclosure documents can be accessed on EDGAR.

10.4 Tagging Information in SEDAR Filings

Comments Received From Market Participants:

While SEDAR is easier to use than EDGAR, the latter system requires information to be tagged which allows specific types of information to be easily accessed without the necessity of reviewing entire documents. In discussing the redevelopment of SEDAR, the question arose as to whether data should be tagged as required by EDGAR. There was opposition from filing companies but SEDAR users were supportive of such an initiative.

Recommendation:

The Commission should consider requiring the tagging of information filed on SEDAR to accommodate the interests of investors in those Canadian corporations which are not required to file on EDGAR. Shareholders of Canadian corporations filing only on SEDAR should have the same ease of access to information as do shareholders of EDGAR filers.

10.5 Accounting Standards

Comments Received From Market Participants:

Canadian auditing standards require to a considerable extent the exercise of professional judgement by auditors. This judgement is sometimes used to arrive at overly aggressive interpretations of the standards that are not consistent with the spirit and intent of the standards. The OSC should exercise its power under the Act to impose rules relating to accounting and auditing standards.

Recommendation:

The Commission should not take on accounting and auditing rule making in the broad sense. It is questionable as to how useful it would be for the OSC to step in and begin making such rules. This would require the OSC to go through the rule-making process and devote considerable additional resources to an area where the OSC lacks extensive expertise.

There are occasions where the OSC could make rules on accounting matters pertaining to disclosure but it should leave regulatory oversight to independent organizations such as the recently announced Auditing Assurance Standards Oversight Council.

10.6 Audit Opinions

Comments Received From Market Participants:

Market participants suggested that the Commission should address the form and substance of the audit opinion. For many years, the required audit opinion contained a two-part statement as follows: (1) "the financial statements present fairly, in all material respects, the financial position of the corporation and the results of its operations and cash flows"; and (2) "the financial statements have been prepared in accordance with Canadian generally accepted accounting principles". A number of years ago, the required opinion was changed to a one-part opinion which now states that "the financial statements present fairly, in all material respects, the financial position of the corporation and the results of its operations and its cash flows in accordance with Canadian generally accepted accounting principles". As we have seen from many recent cases in the United States and Canada, GAAP can be interpreted and applied in many creative and often misleading ways. The one-part opinion states, in effect, that the financial results are fairly presented based on the application of GAAP. The two-part opinion requires the auditor to step back from GAAP and look at the overall result of the auditor's application of GAAP and conclude that the manner in which GAAP has been applied has resulted in financial statements that fairly present the overall financial position of the corporation. This would require the auditors to determine that the judgement calls they used in the application of GAAP to operations and transactions were reasonable and did not include, for example, the use of "loopholes" or other aggressive or questionable interpretations of GAAP which would distort the true picture of the financial results. The two-part opinion, which was considered appropriate for many years, is consistent with the recently enacted United States Sarbanes-Oxley Act of 2002 which requires CEOs and CFOs to certify that the financial statements of their corporations fairly present the financial condition of the corporation. United States auditing standards also require the one- part auditor's opinion. The two-part opinion could

possibly have a beneficial effect on the confidence of investors in the financial statements of public corporations.

Recommendation:

While we do not express an opinion as to the desirability of either form of audit opinion, we believe that the Commission, along with the Canadian accounting authorities, should review the rationale for the one-part auditors' opinion. If there are not sufficient reasons for the previous change from a two-part opinion to a one-part opinion and if the two-part opinion is considered to be superior to the one-part opinion, the Commission should take the steps necessary to require the two-part statement to be included in auditors' opinions.

10.7 Rule-Making and Blanket Orders

Comments Received From Market Participants:

The fact that new Rules and amendments to existing Rules cannot be implemented expeditiously severely hampers the OSC's ability to respond to new developments and products or to rectify deficiencies in the Rules in an efficient and cost effective manner. The inability to issue blanket orders pending enactment or amendment of Rules requires the OSC and market participants to incur additional costs and utilize more human resources dealing with applications for relief that must be made on a case-by-case basis.

Recommendation:

To rectify this situation, the OSC should seek the legislative authority to issue blanket orders containing "sunset clauses" providing that the order will terminate after a specified period of time. During that period the OSC could enact or amend a Rule to deal with the issues addressed by the temporary blanket order.

10.8 Issuance of Prospectus Receipts for Investment Funds

Comments Received From Market Participants:

In connection with applications by investment funds for prospectus approval Staff will make additional comments after the normal time period for comments has ended. The issuers will rely on their belief that final comments have been received and will go to print with the document with those comments only to be surprised to receive further comments. These are afterthoughts on the part of Staff that are usually not material but the issuer must deal with them or the prospectus receipt will not be issued. The fact that additional minor details must be included in the document creates unwarranted further delay and cost.

Market participants feel that such situations constitute an abuse of process on the part of Staff who appear to rely on the fact that their authority will not be challenged for fear that the matter will be taken to a costly and time-consuming hearing. In addition, applicants do not want to go over a Staff member's head in order to avoid possible reprisals on future applications or filings.

Recommendation:

Staff should not be precluded from making additional comments related to fundamental oversights after the stipulated comment period has expired, but minor details should not be permitted to delay the issue of receipts, orders or approvals beyond the normal time periods. Comments on minor details should be conveyed to the applicants as informal reminders with respect to similar applications in the future.

10.9 Equitable Treatment of Applicants

Comments Received From Market Participants:

Complaints were received regarding applications for exemptive relief, particularly with respect to investment funds. These applications are often based on relief that has been previously granted to other applicants. Fund companies find that there is no assurance that they will be

granted relief on the same terms and conditions as the relief previously granted to others. There is a need for a greater sense of fair play. If exemptive relief has been granted once, it should also be granted to other applicants in similar cases unless there has been a necessary policy change or a material mistake was made by the OSC with respect to the prior application. Two particular cases where Staff decided, without notice, that relief which had previously been granted to many applicants would no longer be available were the sprinkling of pooled funds and funds of funds.

If a fund is given relief that helps generate a greater rate of return it will have a competitive advantage over other funds that are not able to get the same relief. This situation of competitive disparity also occurs when one party is given relief but on more restrictive terms than the terms previously granted to other applicants notwithstanding that the application is quite similar, if not identical, to the others. It was suggested to us that notice should be given to market participants that relief previously granted on particular terms will no longer be granted, coupled with an explanation of the policy basis for the change. The current practice of the Commission is that once a party is granted relief, it is not refused on the same type of application in the future even if there has been a change in policy. This practice also creates competitive disparity amongst market participants.

Recommendation:

It is clear that the OSC should be allowed to change its view with respect to the granting of relief in particular situations. While we acknowledge the fact that inconsistency in the granting of relief can have a negative effect on the ability of issuers to compete on an equal footing, investor protection should take precedence over potential competitive disparity. However, when deciding whether or not to discontinue the granting of certain exemptions, the OSC should balance carefully competitive fairness considerations against investor protection objectives.

The Commission should inform market participants on a timely basis when it decides that it will no longer grant certain types of relief. The OSC should have greater transparency in its relief granting process. In this regard, we note that the Enforcement Branch of the Commission recently adopted a transparent approach by publicizing for the first time the risk-based criteria it employs to determine whether or not to commence an investigation of market participants.

An alternative approach would be to adopt the SEC's "no-action letter" system. It is viewed as being a much fairer system because it puts everyone on notice of the action taken and the related terms and conditions of the relief granted. If an issuer's proposed application fits within the four corners of the no- action letter, the issuer can usually be assured that it will receive exemptive relief.

11. Enforcement Matters

11.1 Insider Trading / Attaching Client Information to Trading Data

Comments Received From Market Participants:

From Enforcement's perspective, the process of information gathering could be simplified if account records were attached when trading data goes through exchanges. Currently, the stock exchange trade history file identifies the daily trading in securities only by brokerage house. If the stock exchange received the broker's account number for each trade, it would allow enforcement to see who the true buyers and sellers are thus making trading more transparent. In essence, this feature would make it much easier for enforcement to analyze trades and look for manipulation such as high closings, opening trades at a higher price than previous days close, upticks, downticks, match trades, wash trades and the control exercised by an individual or group.

Recommendation:

We understand that the OSC is working with RS Inc. to implement this change.

11.2 Insider Trading Detection / Dealer Responsibility

Comments Received From Market Participants:

Unlawful insider trading is one of the most important factors contributing to a lack of confidence of investors in the fairness and integrity of the capital markets. Investors have the perception that they are not trading on an even playing field. Any measures that can detect and /or prevent unlawful insider trading should therefore be considered.

We understand that in the United States, when a brokerage account is opened the customer is required to state on the application form the names of corporations in respect of which he/she is an insider (Insider Corporations) and is required to keep that information current. When the customer attempts to trade securities of an Insider Corporation the dealer, before executing the

trade, is required to ask the insider whether or not he / she is in possession of material undisclosed information. If the answer is in the negative, the dealer must then check with the Insider Corporation to verify that the insider is in a "trading window" and therefore able to trade the securities of the Insider Corporation.

Recommendation:

The Commission should investigate the effectiveness of the United States rule and consider, in conjunction with the IDA and RS Inc., the propriety of introducing a similar rule in Ontario and, through the CSA, throughout Canada.

11.3 Information Requests

Comments Received From Market Participants:

As part of its investigative efforts, Enforcement Staff send out requests for information from market participants. Market participants often view these requests as overly onerous due to the volume of information requested.

Recommendation:

It would be difficult to eliminate this concern on the part of market participants because information requests are often designed to ensure that the integrity of the investigation is not compromised by alerting the party being investigated as to the specific matters of interest to the Commission. It is acknowledged that Enforcement should not be required to reveal prematurely the subject matter of its investigation. This would have a negative impact on its ability to effectively investigate and prosecute parties who contravene securities laws. However, every effort should be made to ensure that information requests are as focused and reasonable as possible in order to reduce compliance costs incurred by the market participants being investigated.

11.4 File Closings

Comments Received From Market Participants:

A problem with respect to enforcement, is the fact that persons who have been under investigation are not advised if their file has been closed or when it will be closed. Market participants should not have the possibility of enforcement action hanging over their heads indefinitely.

Recommendation:

We understand that the Enforcement Branch has taken steps to rectify the situation. Although an official policy has not yet been formulated, as a matter of practice Enforcement has been providing persons who have been under investigation, but are no longer under investigation, with written advice that it will not be initiating proceedings against them. An official policy is being developed and is scheduled to be issued early in 2003.

11.5 Whistle Blowing

Comments Received From Market Participants:

The introduction of a whistle blowing provision would encourage employees of registrants and issuers to inform the OSC of inappropriate activities. Adopting such a provision would increase disclosure of wrongdoing, facilitate the investigation / prosecution process and improve compliance through its deterrent effect.

Recommendation:

The OSC should seek an appropriate legislative framework to protect whistleblowers who have raised concerns within their firms and are troubled by the lack of a satisfactory response or who believe they are not able to raise the matter internally. Such legislation would provide employees with assurance of confidentiality and protection from reprisals. The Competition Act whistle blowing provision could be considered as a model. The Financial Services Authority of

the United Kingdom recently introduced a dedicated whistle-blowing telephone line and e-mail address and encourages whistleblowers to disclose to the FSA their concerns about possible wrongdoing. Whistleblowers are protected under the U.K.'s Public Interest Disclosure Act which allows them to assert legal claims in respect of victimization. The experience of the FSA with its whistle-blowing system should be monitored by the OSC.

11.6 Severity of Sanctions

Comments Received From Market Participants:

We were advised that the sanctions currently available to the OSC do not serve as sufficient deterrents to those who would risk contravention of securities laws.

Recommendation:

We concur with this widespread concern expressed by market participants. We were therefore pleased that the Ontario Legislature recently passed legislation which: (1) grants to the OSC the power to impose administrative fines and order the disgorgement of illegally obtained profits; (2) increases the maximum penalties for securities law violations, including unlawful insider trading; (3) introduces anti-fraud and market manipulation provisions; and (4) gives the OSC the power to enact rules to strengthen corporate governance requirements, including the requirements that audit committees be independent of management and that CEOs and CFOs certify the accuracy of their corporations' financial statements.

11.7 Voluntary Payments / Settlements

Comments Received From Market Participants:

Concerns have been expressed regarding the Enforcement's Branch's practice of negotiating settlement packages on the basis that it requires the accused person to make a "voluntary" payment to the OSC in order to receive a penalty under the settlement package that is less severe than the penalty that the OSC will seek if the accused person exercises his / her right to proceed to a full hearing before the Commission. If this practice constitutes, in effect, the payment by the

accused person of money to secure a penalty that is less severe than the penalty that Enforcement would recommend at a hearing to be appropriate having regard to the nature of the alleged offence, the practice is troublesome. The fact that the Commission will avoid the costs and time involved in a full hearing is an appropriate basis for Enforcement Staff to recommend a reduced penalty. The voluntary payment practice could be perceived to favour those accused persons who can afford to make a substantial voluntary payment over those who cannot. The severity of the penalty recommended by Staff in settlement proceedings should be dictated by the severity of the offence and the avoidance of the cost of a hearing and not by the amount the accused can afford to pay.

Recommendation:

The OSA contemplates that the OSC may receive money as a payment in connection with the settlement of enforcement proceedings and that such money may be designated in the settlement agreement for allocation to or for the benefit of third parties (such as the Investor Education Fund (Section 3.4(2)). The Commission should review the manner in which the voluntary payment mechanism is used in settlement proceedings with a view to ensuring that the Commission's settlement procedures are fair and equitable and are perceived to be so. We are advised by OSC Staff that a person's ability to pay is in fact taken into account in determining the amount of a voluntary payment. Regardless of the amount of a voluntary payment, sanctions imposed should be sufficiently severe to deter inappropriate conduct by the settling party and by other market participants.

Respectfully submitted,

Morley Carscallen, F.C.A. Keith Gray Gar Pink, Q.C.

APPENDIX A: GLOSSARY

"ATS" means automated trading system.

"CD" means continuous disclosure.

"CFSO" means the Centre for the Financial Service OmbudsNetwork.

"CIPF" means the Canadian Investor Protection Fund.

"CSA" means Canadian Securities Administrators.

"CTO" means cease trading order.

"EDGAR" means Electronic Data Gathering, Analysis and Retrieval system.

"FSA" means the Financial Services Authority of the United Kingdom.

"FSO" means the Financial Services OmbudsNetwork.

"GAAP" means Generally Accepted Accounting Principles.

"IDA" means the Investment Dealers Association of Canada.

"IFIC" means the Investment Funds Institute of Canada.

"IRO" means Independent Regulatory Organization.

"KYC" means the Know Your Client Rule

"MFDA" means the Mutual Fund Dealers Association.

"MRRS" means the Mutual Reliance and Review System.

"NRD" means the National Registration Database.

"OBSI" means the Ombudsman for Banking Services and Investments.

"OSA" means the Securities Act (Ontario), R.S.O. 1990, c.S.5.

"RS Inc." means Market Regulation Services Inc.

"SEC" means the U.S. Securities and Exchange Commission.

"SEDAR" means System for Electronic Document Analysis and Retrieval.

"SRO" means self-regulatory organization.

"Task Force" means the Regulatory Burden Task Force.

"TSX" means the Toronto Stock Exchange (formerly the "TSE").

APPENDIX B: SUMMARY OF RECOMMENDATIONS

The recommendations summarized briefly below should be considered in conjunction with the related comments received by the Task Force from market participants and the detailed descriptions of the Task Force's recommendations contained in the Report.

Introduction

1. The OSC should establish periodically or on an ongoing basis, a working group with a mandate similar to that of the Task Force to enable market participants to communicate their concerns and suggestions to the OSC on an anonymous basis.
2. The Executive Director should report to the Executive Committee at least monthly regarding the manner in which concerns expressed by market participants and the Task Force's recommendations are being addressed.
3. With the information obtained from the Executive Director the Executive Committee should report periodically to the Board of Directors regarding its consideration and /or implementation of the Task Force's recommendations.

Overarching Regulatory Burdens

4. Securities regulators should expand MRRS to permit each provincial or territorial regulatory authority to treat compliance with another jurisdiction's rules as compliance with its rules. **(Section 1.1)**
5. Securities regulators should pursue legislative changes that entitle them to delegate their responsibilities in particular situations to another securities regulator. **(Section 1.1)**
6. Securities regulators should remove from the IDA its trade association / lobby functions, leaving it with its regulatory responsibilities. **(Section 1.2)**
7. 50% of the members of the Board of Directors of the IDA should be independent of the members of the IDA. **(Section 1.2)**

8. The IDA's three member disciplinary panels should be restructured and composed of an independent lawyer as Chair, an independent IDA Director and a representative of an IDA member. **(Section 1.2)**
9. The OSC, along with the CSA, should consider the desirability of merging the IDA, the MFDA and RS Inc. to establish a single SRO to regulate the operations and conduct of its registrant members and to administer and enforce marketplace trading rules. **(Section 1.2)**
10. The OSC should strive to achieve an appropriate balance between prescriptive and proscriptive regulatory requirements. **(Section 1.3)**
11. The OSC should review existing Rules and other requirements to determine whether they can be simplified, re-formulated on a more proscriptive basis or eliminated altogether. **(Section 1.3)**
12. The OSC should develop more plain language information booklets that explain certain Rules. **(Section 1.3)**
13. The OSC Inquiries Unit and Contact Centre should offer to share its expertise with the CFSO in order to help it avoid potential pitfalls and enhance its efficiency. **(Section 1.4)**

Communication of OSC's Value Proposition

14. The OSC should spell out for market participants and the general public the specific cost / benefit analytical procedures that it has in place to ensure that its expenditures are necessary, appropriately prioritized and designed to produce measurable and / or valuable benefits for industry participants and the investing public. **(Section 2)**
15. The OSC should consider procedures whereby qualified, independent consultants or advisors could be retained periodically by the Board of Directors to assist the Board in assessing management's proposed allocation of the Commission's resources in the fiscal year ahead and in evaluating the results of that allocation. **(Section 2)**
16. The OSC should publicize all of its cost control mechanisms and the results of its Stakeholder Satisfaction Studies. **(Section 2)**
17. The OSC should use more effective communication channels to convey its value proposition to the public. **(Section 2)**

18. The OSC should institute a public relations program to disseminate information regarding specific examples of the benefits resulting from the OSC's regulatory activities. **(Section 2)**

19. The OSC should encourage prominent members of the securities industry and public corporations and their professional advisors to submit to the media op-ed articles or to undertake radio or television interviews with a view to expressing independent observations with respect to the value of the OSC's regulatory activities to the investing public and the capital markets. **(Section 2)**

Investor Protection and Remedies

20. The IDA's arbitration procedure should be improved. The maximum amount of claims should be increased to at least $350,000 and arbitration decisions should be published. **(Section 3.1)**

21. The OSC should update its "Making a Complaint" Guide to reflect changes that have taken place such as the expanded jurisdiction of OBSI. **(Section 3.2)**

22. The OSC should publicize the "Making a Complaint" Guide more effectively. **(Section 3.2)**

23. Securities dealers should deliver the "Making a Complaint" Guide to retail investors upon account opening, and it should also be made available at the offices of securities dealers, and on their web-sites. **(Section 3.2)**

24. The OSC should require all registered investment counsel and portfolio managers to participate in OBSI's ombudsman program. **(Section 3.2)**

25. The OSC should consider the possibility of allocating all or a portion of voluntary payments received as part of settlement agreements, in appropriate cases, to compensate investors for losses incurred by them as a result of the wrongdoing of the parties making the voluntary payment. **(Section 3.3)**

26. The OSC should mandate a KYC form with definitions that are more understandable. **(Section 3.4)**

27. The OSC should require registrants to follow mandated procedures regarding the use of the KYC form, such as those suggested in section 3.4 of the report. **(Section 3.4)**

28. The OSC and the IDA should consider requiring registrants to send clients copies of their KYC form annually together with a request to advise the registrant of any amendments that should be made. **(Section 3.4)**

29. The OSC or the IDA should review account opening documentation to determine ways in which it can be simplified or reduced to its essential elements. **(Section 3.4)**

30. The OSC should encourage the establishment of an independent entity (similar to the Dominion Bond Rating Service) to rate the investment quality of stocks. **(Section 3.5)**

31. The OSC should take the necessary action to prohibit the use by dealers of CIPF membership as a promotional tool. **(Section 3.6)**

32. The OSC should require the IDA to work with its members to develop a mechanism to prevent harm to individual investors caused by delays in transferring their securities from one dealer to another. **(Section 3.7)**

Service, Culture and Process

33. The OSC should examine the effectiveness of the consultative processes Staff employ with standing and ad hoc advisory committees. **(Section 4.1)**

34. All committees should report regularly to the Executive Committee. **(Section 4.1)**

35. The OSC should establish a formal "red tape" process to consider, *ex post facto*, the practical effect of rules and to make changes to them in order to eliminate their unwarranted or unintended effects. **(Section 4.1)**

36. The OSC should advise Staff of the importance of responding to inquiries by market participants in a timely manner, even if only to acknowledge the receipt of the message or to indicate that there is nothing to report at the present time. **(Section 4.1)**

37. The OSC should generally encourage more customer friendly, business -like conduct on the part of Staff. **(Section 4.1)**

38. The OSC should consider recruiting more individuals with industry knowledge and expertise. **(Section 4.2)**

39. The OSC should consider enhancing its compensation structure to attract and retain qualified personnel. **(Section 4.2)**

40. The OSC should develop a formal process to permit junior Staff to tap into the knowledge and experience of senior Staff . **(Section 4.2)**

41. The OSC should institute procedures whereby one department is responsible for ensuring that a matter is dealt with efficiently and expeditiously by the appropriate Commission Staff and/or Commissioners. **(Section 4.2)**

42. The OSC should ensure that its employee compensation / recognition system rewards those employees who challenge the status quo, think "outside the box" and exercise discretion responsibly to accommodate novel situations and products. **(Section 4.3)**

43. The senior executives and the managers should make it clear to Staff that their performance will be judged on factors which include creativity and responsible risk-taking. **(Section 4.3)**

44. Managers, when agreeing upon annual goals and objectives for individual Staff members, should include reference to, and emphasize the importance of ,the OSC's stated approach to achieving its mandate. **(Section 4.3)**

45. Commission Executives should produce and personally deliver to junior and senior employees at departmental Staff meetings a Service Practice Protocol, which would spell out best practices designed to assist market participants and instil into employees a sense of urgency, responsiveness, efficiency and team-work. **(Section 4.3)**

46. The OSC should establish a New Products Committee made up of senior Staff from various areas with the necessary breadth of experience to expedite the review of novel applications. **(Section 4.4)**

47. The OSC, pursuant to its mandate to foster market efficiency, should allow reputable market players to proceed with new products or proposals provided that there is adequate disclosure and no clearly identified regulatory risk. **(Section 4.4)**

48. Senior Staff should communicate to junior Staff the fact that they have reviewed a proposal conceptually with an applicant and that it seems acceptable. **(Section 4.4)**

49. Staff should make greater efforts to treat market participants like customers and to adopt a courteous, business-like approach to communicating with market participants. **(Section 4.5)**

50. The OSC should put in place an automatic escalation process that would allow applicants to take a matter, or require Staff to take a matter, to a more senior level to resolve any issue that has not been settled within a specified period of time. **(Section 4.6)**

51. The escalation process should be made known to market participants through an OSC Notice. **(Section 4.6)**

52. The informal procedure set out in OSC Notice 15-701, permitting applicants to meet with a Commissioner, should be used to a greater extent in order to reduce unwarranted delays in the receipt by market participants of OSC decisions with respect to contentious issues. **(Section 4.7)**

53. The OSC should publicize the availability of access to a Commissioner on its web-site and through groups of market participants and practitioners such as the Securities Advisory Committee. **(Section 4.7)**

54. The OSC should reduce the unpublished Commissioner Quorum appeal procedure to writing and include it as an alternative in Notice 15-701 or in a companion Notice. **(Section 4.7)**

55. Senior management should encourage the practice of retrieving voice-mail and returning the calls at regular intervals. **(Section 4.8)**

56. The OSC should establish protocols for the handling of telephone calls, similar to those which exist in the Inquiries & Contact Centre. **(Section 4.8)**

57. The OSC should post its alphabetical and departmental telephone directories on the OSC web-site and keep them up to date. **(Section 4.8)**

58. The OSC should reward Staff members, through compensation enhancements and promotions, for conducting themselves in a manner that demonstrates their understanding that the ultimate consumer of their services is the investing public and not the intermediaries with whom they deal on a day to day basis. **(Section 4.9)**

59. The OSC should establish customer service standards and procedures, similar to those in the Inquiries & Contact Centre. **(Section 4.9)**

60. The OSC should institute periodic customer service audits to ensure that established standards are being met. **(Section 4.9)**

61. The OSC should continue its efforts to design a system that will permit, rather than mandate, the electronic filing of hearing materials in all cases. **(Section 4.10)**

62. A review of the Investment Funds department's staffing needs should be conducted and a report submitted to the Executive Committee. **(Section 4.11)**

Commission Governance

63. The Board of Directors should examine the manner in which it currently exercises oversight of the management and operations of the Commission with a view to determining whether there is a need for improvement. **(Section 5)**
64. The Board should appoint Commissioners with business expertise to a new Operations Committee of the Board. **(Section 5)**

Policy Development

65. The OSC should ensure that certain principles and standards are taken into account when considering possible policy initiatives and proposed or existing Rules. **(Section 6.1)**
66. When considering a possible project initiative, staff should consult Commissioners who have relevant expertise at the beginning of the deliberative process. **(Section 6.2)**

Registration Issues

67. As a national project, the CSA should consider the registration requirements from first principles to determine the minimum amount of information that is essential for effective regulation of registrants. **(Section 7.1)**
68. The CSA should consider whether it would be desirable to delay the implementation of the NRD, taking into account the cost of changing the NRD to accommodate harmonization and mutual reliance if and when they are established. **(Section 7.1)**
69. The CSA should introduce a registration passport, allowing registration in one jurisdiction to serve as registration in the other jurisdictions. **(Section 7.2)**
70. In relation to fee payments, the securities regulators should allow payment through the use of a single cheque with a schedule attached to provide a breakdown of the charges, or establish a monthly invoicing system. **(Section 7.3)**

71. The OSC should involve market participants much earlier in the policy or project development process, e.g. NRD. **(Section 7.4)**

72. The OSC should keep stakeholders fully informed on an ongoing basis regarding the progress of, and changes in, policy projects. **(Section 7.4)**

73. The OSC should explore discontinuing the need for individual registration and making firms responsible for the conduct of employees. **(Section 7.5)**

74. The OSC should review the ATS dealer registration requirements **(Section 7.6)**

Compliance Issues

75. The securities regulators should share information and co-ordinate their efforts so as to eliminate unnecessary duplication of compliance reviews and conflicting remedial requirements. **(Section 8.1)**

76. The OSC should study the added value of legal and accounting reviews of all compliance audits to determine whether the process can be streamlined. **(Section 8.1)**

77. The OSC should consider extending the thirty-day response period for compliance reviews, which registrants find particularly onerous. **(Section 8.1)**

78. For compliance officers, the OSC should consider establishing direct reporting obligations to the firm's audit committee and dotted-line reporting obligations to the Commission for serious infractions. **(Section 8.2)**

79. The OSC should consider reviewing compliance procedures and actions of compliance officers when serious infractions occur. **(Section 8.2)**

80. Where appropriate, the OSC should consider taking enforcement action against compliance officers. **(Section 8.2)**

81. The OSC should consider reducing the leverage disclosure burden on registrants in the manner set out in the report **(Section 8.3)**

82. The OSC should require registrants to deliver an annual leverage disclosure statement to margin account clients. **(Section 8.3)**

83. The OSC should ensure that the IDA and MFDA have appropriate leverage disclosure for registrants in connection with margin accounts that they operate for clients. **(Section 8.3)**

84. The CSA should expedite the work on developing, implementing and operating a national Cease Trade Order database. **(Section 8.4)**

Investment Funds

85. The OSC should study whether there is a sound policy basis for requiring investment counsel and portfolio managers to register as limited marketed dealers in order for them to be permitted to sell units of their own in-house pooled funds. **(Section 9.1)**

86. If the study referred to in Recommendation 86 shows that the registration requirement does not provide additional protection for investors, then the OSC should eliminate the requirement. **(Section 9.1)**

87. As part of its proposed review of the entire pooled fund regime, the OSC should consider an exemption which would allow investors with limited funds to access the benefits of pooled funds. **(Section 9.2)**

88. The OSC should review the multiple trust account requirement for mutual fund dealers to determine whether it is necessary from a risk reduction standpoint. **(Section 9.3)**

89. The OSC should consider whether the interest earned on mutual fund dealer trust accounts could be dealt with in a less burdensome manner. **(Section 9.4)**

90. The OSC should investigate further improvements to the simplified mutual fund prospectus. **(Section 9.5)**

91. The OSC should continue its recently initiated practice of granting exemptions from the rule restricting mutual funds from purchasing new issues from related dealers where the percentage of the new issue being purchased by the mutual fund is small enough that it does not raise any conflict of interest concerns. **(Section 9.6)**

Corporate Finance

92. The OSC should consider simplifying the detailed disclosure requirements for prospectuses or eliminating the prospectus requirement except for IPOs.. **(Section 10.1)**

93. Until proposed amendments to National Instrument 55-101 – Exemption from Certain Insider Reporting Requirements are enacted to provide insider reporting exemptions for

"nominal vice-presidents", the OSC should grant, in accordance with CSA Staff Notice 55-306, "cookie-cutter" exemptions with a waiver of the associated fee in order to minimize the current unnecessary reporting burden. **(Section 10.2)**

94. The OSC should consider accepting EDGAR filings as compliance with the SEDAR filing requirement. **(Section 10.3)**

95. The OSC should consider requiring the tagging of information filed on SEDAR to accommodate the interests of investors in those Canadian corporations which are not required to file on EDGAR. **(Section 10.4)**

96. In certain instances the OSC should make rules on accounting matters, but it should leave regulatory oversight to an independent body. **(Section 10.5)**

97. The OSC should review the rationale for the one-part auditors' opinion with Canadian accounting authorities. **(Section 10.6)**

98. The OSC should seek legislative authority to issue blanket orders with "sunset clauses". **(Section 10.7)**

99. Staff should not delay issuance of investment fund prospectus receipts beyond normal time limits because of additional comments on minor details but should convey such comments to the applicants as informal reminders with respect to similar applications in the future. **(Section 10.8)**

100. When deciding whether or not to discontinue the granting of certain exemptions, the OSC should balance carefully competitive fairness considerations against investor protection objectives. **(Section 10.9)**

101. The OSC should inform market participants on a timely basis when it decides that it will no longer grant certain types of relief. **(Section 10.9)**

102. The OSC should have greater transparency in its relief granting process. The OSC might consider as an alternative, the SEC "no-action" letter process. **(Section 10.9)**

Enforcement Matters

103. The OSC should investigate the effectiveness of the U.S. insider trading detection rule described in the report. **(Section 11.2)**

104. The Enforcement Branch should make every effort to ensure that information requests are as focused and reasonable as possible in order to reduce compliance costs incurred by the market participants being investigated. **(Section 11.3)**

105. In cases where it is clear that a specific individual or firm has been under investigation, but that Enforcement has decided against proceeding with the investigation, the Enforcement Branch should continue its recently introduced practice of informing those parties that a decision has been made that it is not in the public interest to take any action at the present time. **(Section 11.4)**

106. The OSC should seek an appropriate legislative framework to protect whistleblowers similar to that recently established by the Financial Services Authority in the U.K. **(Section 11.5)**

107. The OSC should monitor the experience of the FSA with its whistle-blowing system. **(Section 11.5)**

108. The OSC should review the manner in which the voluntary payment mechanism is used in settlement proceedings to ensure that it produces a fair result and that, regardless of the amount of the voluntary payment, the sanctions imposed are sufficiently severe to deter future violations by the settling party and other market participants. **(Section 11.7)**